

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Simon Wang	Team: Squad #10	CCRB Case #: 201507839	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 09/10/2015 12:47 AM	Location of Incident: § 87(2)(b)	Precinct: 77	18 Mo. SOL 3/10/2017	EO SOL 3/10/2017	
Date/Time CV Reported Wed, 09/16/2015 11:19 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/16/2015 11:19 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Craig	26996	945623	077 PCT
2. POM Alejandro Valderrama	23435	953512	077 PCT
3. SGT William Diab	4730	940125	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Alejandro Valderrama	Abuse: PO Alejandro Valderrama stopped § 87(2)(b)	§ 87(2)(b)
B.SGT William Diab	Abuse: Sgt. William Diab stopped § 87(2)(b)	§ 87(2)(b)
C.SGT William Diab	Force: Sgt. William Diab pointed his gun at § 87(2)(b)	§ 87(2)(b)
D.POM Alejandro Valderrama	Force: PO Alejandro Valderrama pointed his gun at § 87(2)(b)	§ 87(2)(b)
E.POM Patrick Craig	Force: Patrick Craig used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM Alejandro Valderrama	Abuse: PO Alejandro Valderrama frisked § 87(2)(b)	§ 87(2)(b)
G.POM Alejandro Valderrama	Abuse: PO Alejandro Valderrama searched § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On September 10, 2015, at approximately 12:47 a.m., § 87(2)(b) was standing in front of his apartment building at § 87(2)(b) in Brooklyn. § 87(2)(b) was speaking on his cell phone with his sister and was holding a pizza box. § 87(2)(b) had been standing outside his building talking to his sister for approximately one hour. An unmarked vehicle pulled up in front of § 87(2)(b) with officers identified by the investigation as Sgt. William Diab, PO Alejandro Valderrama and PO Patrick Craig of the 77th Precinct inside. According to § 87(2)(b) PO Valderrama asked § 87(2)(b) whether he lived in the area. § 87(2)(b) replied that he did. PO Valderrama then asked where he lived. § 87(2)(b) was not aware that he was speaking to police officers and did not want to divulge his address, so he lied to PO Valderrama and stated that he lived down the street and began to walk in that direction. § 87(2)(b) claimed that PO Valderrama stated, “Well your pizza’s going to get cold.” and all of the officers in the vehicle exited the vehicle. § 87(2)(b) believed he was about to be robbed and ran inside his apartment building. Officers pursued § 87(2)(b) (**Allegations A and B**) through the stairwell onto the building roof where § 87(2)(b) hid from the officers, but PO Valderrama and Sgt. Diab found him and allegedly pointed guns at him (**Allegations C and D**). § 87(2)(b) was placed in a prone position on the ground. When § 87(2)(b) looked up at the officers, PO Craig allegedly kicked him in the head and told him not to look at him (**Allegation E**). PO Valderrama frisked § 87(2)(b) for weapons (**Allegation F**) and also allegedly searched inside his back pockets (**Allegation G**). Officers found no drugs or weapons and released § 87(2)(b). An hour later, two uniformed officers arrived in response to § 87(2)(b)’s 911 call and advised him on how to file a complaint against police officers. § 87(4-b), § 87(2)(g)

According to § 87(2)(b), the managing company of § 87(2)(b) there were no functional security cameras in the building on the incident date.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of December 1, 2015, § 87(2)(b) has not filed a notice of claim regarding this incident.
- A search of the OCA database showed no criminal convictions for § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b)
- Sgt. Diab has had seven other CCRB complaints, involving 12 allegations filed against him in his nine year tenure at the NYPD. In CCRB case number 200800389, allegations of physical force and discourteous action were substantiated against Sgt. Diab, resulting in charges. After negotiations, Sgt. Diab was penalized with the loss of 35 vacation days (**Board Review 1**).
- PO Valderrama has had four other CCRB complaints, involving 10 allegations filed against him in his three year tenure at the NYPD. None of the allegations have been

substantiated § 87(2)(g)

■ (Board Review 2).

- PO Craig has had seven previous CCRB complaints, involving 19 allegations made against him in his seven year tenure at the NYPD. One allegation of improper frisk was substantiated in case number 201201580. He was given instructions as a result (Board Review 3).

Findings and Recommendations

Allegations not Pleaded

- **Force:** § 87(2)(b) stated that an officer he could not see pushed him on the shoulder while ordering him to the ground, resulting in no injury. PO Valderrama stated that he placed a hand on § 87(2)(b)'s shoulder in a guiding motion while ordering him to the ground. § 87(2)(g)

Explanation of Subject Officer Identification

- Despite several calls and a photo-array request letter, § 87(2)(b) did not respond to requests by the undersigned to view photo arrays of the officers present at this incident.
- The stop is pleaded against Sgt. Diab and PO Valderrama because according to the accounts of all three officers, PO Valderrama initiated the stop by exiting the vehicle and ordered § 87(2)(b) to stop with Sgt. Diab following behind. Furthermore, Sgt. Diab bore responsibility as the supervisor on the scene. PO Craig is not identified as a subject in the stop because he claimed that he was not aware of the justification for the stop and that he initially did not pursue § 87(2)(b). Nothing in § 87(2)(b)'s statement contradicts this.
- § 87(2)(b) stated that guns were pointed at him while on the roof of the building, but he could not see which officers were holding those guns through the darkness. Sgt. Diab and PO Valderrama admit to drawing their firearms, and PO Valderrama admitted to pointing his gun at § 87(2)(b) while on the roof, therefore the allegations are pleaded against them.
- § 87(2)(b) stated while he was on the ground, he looked up and saw the face of the driver of the patrol car, whom he described as a white male, in his 30's with a muscular build of an unknown height. § 87(2)(b) claimed that officer told him not to look at him and kicked him in the back of the head. Since PO Craig was the driver of the vehicle and is consistent with the physical description, that allegation is pleaded against him.
- PO Valderrama admitted to frisking § 87(2)(b). § 87(2)(b) alleged that he was also searched at the same time and the officer obtained his identification from his pocket. Since PO Valderrama admitted to frisking § 87(2)(b) and wrote a Stop, Question and Frisk report for this incident, both allegations are pleaded against him.

Allegation A – Abuse: PO Alejandro Valderrama stopped § 87(2)(b)

Allegation B – Abuse: Sgt. William Diab stopped § 87(2)(b)

It is undisputed that Sgt. Diab and PO Valderrama pursued § 87(2)(b) onto the roof of § 87(2)(b) and stopped him there. It is also undisputed that § 87(2)(b) had been standing alone with a pizza box for approximately one hour in front of § 87(2)(b) where his

apartment is located on the first floor, before he was stopped at 12:47 a.m. § 87(2)(b) stated that the pizza box contained two slices of pizza, and that he was talking through wired headphones with his sister via cell phone. Sgt. Diab, PO Valderrama and PO Craig, who were patrolling the area in plainclothes, in a black unmarked Chevrolet Impala, all stated that they had observed § 87(2)(b) standing outside of his building earlier that evening and observed him still standing in the same location approximately one hour later. PO Valderrama and Sgt. Diab stated they intended to approach § 87(2)(b) and ask him what he was doing.

§ 87(2)(g) § 87(2)(b) stated that the officers initially drove past him, and then reversed their vehicle in front of him. PO Valderrama asked him whether he lived in the area and where he lived. § 87(2)(b) lied, indicating that he lived down the block because he did not know that he was speaking to a police officer and believed that the men in the vehicle were about to rob him. § 87(2)(b) then began to walk in the direction to which he indicated. He stated that at that point, PO Valderrama said to him, “Your pizza’s about to get cold.” before everyone from the vehicle alighted. Still believing he was being robbed by civilians, § 87(2)(b) stated that he ran inside his building for safety. § 87(2)(b) did not enter his apartment, nor did he knock on any of his neighbor’s doors because he believed that the officers, whom he still believed to be criminals were hot on his heels. § 87(2)(b) ran via the stairwell to the roof of the building, where he hid and called 911. § 87(2)(b) was connected with an operator, but was only able to say that he needed help and could not provide any further specifics and hung up. 911 records confirmed that § 87(2)(b) made this phone call (**Board Review 4**). § 87(2)(b) denied hearing anyone identify themselves as police officers and did not hear any commands for him to stop while running (**Board Review 5**).

Sgt. Diab (**Board Review 6**) and PO Valderrama (**Board Review 7**) stated that they first remained in their vehicles while stopped in front of § 87(2)(b) and that PO Valderrama asked him “What’s up?” Sgt. Diab stated that § 87(2)(b) reacted with a “deer in headlights” look and PO Valderrama stated that § 87(2)(b) reacted “like he had seen a ghost.” All officers stated they displayed their shields on chains around their necks, but did not verbally identify themselves as police officers. PO Valderrama stated he did not know whether § 87(2)(b) saw the shield around his neck. Both Sgt. Diab and PO Valderrama stated that § 87(2)(b) “fumbled” or otherwise furtively placed something inside the pizza box which was held at waist-level. Neither Sgt. Diab nor PO Valderrama could see what if anything was placed inside the box, and were unable to describe the shape or size of the object. Sgt. Diab cited the high crime rate of the neighborhood and § 87(2)(b)’s nervous facial expression as reasons leading him to believe the object was a gun. PO Craig was the driver of the vehicle which was on the opposite side from the sidewalk where § 87(2)(b) was standing. PO Craig claimed that as a result, he did not see what § 87(2)(b) did once the officers pulled up to him in their vehicle. PO Craig did not know what PO Valderrama or Sgt. Diab observed and did not know what caused them to pursue § 87(2)(b). PO Craig exited the vehicle after PO Valderrama and Sgt. Diab and did not pursue § 87(2)(b). He later went to the roof after hearing shouting (**Board Review 8**). After stopping § 87(2)(b) the officers did not find anything in the pizza box.

In People v. De Bour 40 NY2d 210, 215, the court delineated four levels of police intrusion. The first level of intrusion authorizes a minimal intrusion to approach to request information where there is some objective credible reason. The officer has no right to detain the individual at this

level. The second level is activated by a founded suspicion that criminal activity is afoot and permits a greater intrusion to gain explanatory information. Under the third level, the police may forcibly stop and detain an individual if there is reasonable suspicion that a person has committed, is committing or is about to commit a felony or misdemeanor. Finally, the final step permits the officer to arrest when there is probable cause to believe the person has committed a crime (**Board Review 9**).

An officer's experience, his awareness of being in an area known for criminal activity, and observations of furtive movements such as adjustments in the waistband do not constitute specific circumstances indicative of criminal activity establishing reasonable suspicion even when coupled with the suspect's flight from the police. People v. Clermont N.Y. App. LEXIS 8070, Slip Op 07989 (2015) (**Board Review 10**).

§ 87(2)(g)

[REDACTED]

Allegation C – Force: Sgt. William Diab pointed his gun at § 87(2)(b)

Allegation D – Force: PO Alejandro Valderrama pointed his gun at § 87(2)(b)

It is undisputed that Sgt. Diab drew his firearm after he began to pursue § 87(2)(b) up the stairwell of the building and did not holster the firearm until a frisk was conducted, confirming § 87(2)(b) was unarmed. Sgt. Diab (**Board Review 6**) stated that he did not recall whether he pointed his gun at § 87(2)(b). It is undisputed that PO Valderrama pointed his gun at § 87(2)(b). PO Valderrama stated that he feared for his safety while walking onto the dark roof in pursuit of a fleeing suspect. He stated that the location was inherently dangerous and that he held his gun in one hand and his flashlight in the other hand both in front of him while searching the roof (**Board Review 7**). PO Valderrama confirmed that Sgt. Diab's gun was drawn, but did not know where Sgt. Diab pointed his gun. PO Valderrama stated he found § 87(2)(b) crouching behind a low structure on the roof and pointed his gun and his flashlight at § 87(2)(b) because he could not see § 87(2)(b)'s hands. PO Valderrama ceased pointing his firearm once § 87(2)(b) complied with his order to get on the ground. § 87(2)(b) stated that he hid on the roof of his apartment building which by all accounts was completely devoid of any lighting. Through the darkness, § 87(2)(b) saw an unknown number of guns pointed at him by individuals he could not see (**Board Review 5**).

The policy of the NYPD is that an officer is permitted to draw his firearm and point it at another person so long as that officer has a reasonable fear for his own or another person's safety. While the standard is ultimately an objective one – what a reasonably prudent police officer in the same circumstances would have done – due deference should be given to the judgment of the officer at the time and scene of the incident. *Police Department v. Gliner* OATH index No. 955/400 (2000) (**Board Review 11**).

§ 87(2)(g)

Allegation E – Force: Patrick Craig used physical force against § 87(2)(b)

§ 87(2)(b) alleged that as he was prone on the ground on the roof, he looked up and saw PO Craig's face. § 87(2)(b) alleged that PO Craig told him, "Don't look at me" and kicked him in the back of the head (**Board Review 5**). Sgt. Diab, PO Valderrama and PO Craig all denied that this occurred. This allegedly occurred on the roof of the building in complete darkness at approximately 12:45 a.m. There were no witnesses to this incident. § 87(2)(b) did not claim to have suffered any visible physical injuries and did not seek medical treatment.

§ 87(2)(g)

Allegation F – Abuse: PO Alejandro Valderrama frisked § 87(2)(b)

It is undisputed that PO Valderrama frisked § 87(2)(b) § 87(2)(b) felt a person he could not see frisk his back pockets as he lay on the ground. PO Valderrama stated that he frisked § 87(2)(b)'s waistband and pants pockets for weapons. PO Valderrama frisked those locations on § 87(2)(b)'s body because § 87(2)(b) had held the pizza box in the vicinity of the waistband (**Board Review 6**). Sgt. Diab also stated that a frisk took place and cited the same reason. PO Valderrama stated that he did not see any bulges or anything else in the areas he frisked.

In *People v. Roberts*, 94 A.D. 2d237 (1983) the court held that the placing of one's hand under a jacket "into the pit of his stomach" is not indicative that the person has a concealed weapon, as the behavior is as equally consistent with a host of non-criminal activities and cannot authorize a frisk. (**Board Review 12**)

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]

Allegation G – Abuse: PO Alejandro Valderrama searched § 87(2)(b)
It remains in dispute whether a search occurred. § 87(2)(b) alleged that an officer he could not see searched inside the back-pockets of his pants and removed his wallet (**Board Review 5**). Sgt. Diab and PO Valderrama denied searching § 87(2)(b) and PO Craig did not witness a search occur (**Board Review 6 and 7**). PO Valderrama stated that he obtained § 87(2)(b)'s name and pedigree information verbally and denied obtaining any identification card from § 87(2)(b)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]

§ 87(4-b), § 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]

[Redacted]
[Redacted]

Squad: 10

Investigator:	_____	Simon Wang	12/15/15
	Signature	Print	Date
Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date
Attorney:	_____	_____	_____
	Title/Signature	Print	Date